

November 14, 2019

***EX PARTE NOTICE***

**VIA ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commissions  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Modernizing Unbundling and Resale Rules in an Era of Next-Generation Networks and Services Notice of Proposed Rulemaking—WC Docket No. 19-308; USTelecom Forbearance Petition—WC Docket No. 18-141.**

Dear Ms. Dortch:

On November 12, 2019, INCOMPAS and its members met separately with the Offices of FCC Chairman Pai, FCC Commissioner O’Rielly, FCC Commissioner Carr, FCC Commissioner Rosenworcel, FCC Commissioner Starks, and the Wireline Competition Bureau and the Office of Economics and Analytics staff. Participants in these meetings are outlined in the enclosed Appendix.

We expressed the opposition of INCOMPAS and its members to the Notice of Proposed Rulemaking, consistent with our previous filings in the USTelecom Forbearance Petition in WC Docket No. 18-141, wherein INCOMPAS and its members demonstrated that the current regime enables and promotes broadband deployment by both competitors and incumbents. We respectfully requested that the Commission pause further consideration of these issues.

During the meetings, INCOMPAS’ members discussed how they are using the elements of the current competition regime to bring more choice, faster speeds, and better customer service to residential and business customers in their communities, including urban, suburban, and rural areas. In fact, the current regime incents both competitors and incumbents to build as incumbents may retire their copper once they have deployed next-generation networks, and competitors no longer have guaranteed access to that copper once it is retired, nor do they have guaranteed access to new networks. As a result of the current regime, INCOMPAS’ members are racing to deploy fiber in their communities to serve residential and small business customers that will be the foundation for 5G networks in the U.S. Customers are clamoring for more competition—they want more choice, not less. However, the proposed NPRM as well as the forbearance granted on TDM transport already is chilling planned investments from competitors.

We also discussed our concerns with adopting a proposal to extend the Commission's findings from the Forbearance Order in August on avoided-cost resale when INCOMPAS is challenging in court the findings in that Order. We described how avoided-cost resale requirements discipline the market power of incumbents, and how it is a necessary tool to provide competitive options for business and government customers, who continue to rely on copper-based services for critical functions. We provided the recent example of a filing by the National Weather Service ("NWS"), of the National Oceanic and Atmospheric Administration ("NOAA"), where NWS explained that it relies on copper-based services to perform critical functions, such as supporting NOAA Weather Radio, which provides nationwide weather warnings, watches, forecasts, and other hazard information and supporting the Automated Surface Observing System, which is the Nation's primary surface weather observing network for aviation. We also explained that avoided-cost resale is essential for our members and other non-incumbents who are pre-approved under the General Service Administration's Enterprise Infrastructure Solutions ("EIS") contract to bid competitively on solicitations for telecommunication services, including copper-based services, issued by federal government agencies. EIS takes full effect in 2023, and forbearance on avoided-cost resale will be a detriment to federal agencies and taxpayers, who will have to pay more for these necessary services as a result of decreased competition.

Accordingly, we urged the Commission not to adopt the NPRM. Rather, we stated that the Commission should complete its broadband mapping effort, including USTelecom's recommendations of a complete map that shows which locations actually have broadband availability and competition, before relying upon old proceedings and Form 477 data that have been criticized as incomplete and inadequate for universal service funding and other purposes by many parties, including the Commission.

Respectfully submitted,

*/s/ Angie Kronenberg*

Angie Kronenberg  
Chief Advocate & General Counsel

cc: FCC Participants in the Appendix

Enclosure

## **APPENDIX**

### **INCOMPAS Participants**

Chip Pickering, INCOMPAS  
Angie Kronenberg, INCOMPAS  
Chris Shipley, INCOMPAS  
Dane Jasper, Sonic  
Matt Kohly, Socket  
Alan Yoder, SmartCom  
Howard Hawbaker, SmartCom  
Fletcher Kittredge, GWI<sup>1</sup>  
Jeff Buckingham, Digital West  
Sana Sheikh, Granite Telecommunications, LLC  
Susan Butler, Capitol Resources  
Doug Denney, Allstream  
Mark Ianuzzi, TelNet<sup>2</sup>  
Roger Fleming, Northfork Strategies<sup>3</sup>

### **Office of FCC Chairman Pai**

Nirali Patel

### **Office of FCC Commissioner O’Rielly**

Joel Miler

### **Office of FCC Commissioner Carr**

Joseph Calascione

### **Office of FCC Commissioner Rosenworcel**

Travis Litman

### **Office of FCC Commissioner Starks**

Austin Bonner

### **Wireline Competition Bureau and Office of Economics & Analytics Staff**

Terri Natoli  
Ramesh Nagarajan

---

<sup>1</sup> By phone for the following meetings: Office of Commissioner O’Rielly, Office of Commissioner Carr, Office of Chairman Pai, Office of Commissioner Starks, and Office of Commissioner Rosenworcel.

<sup>2</sup> By phone for the following meetings: Office of Chairman Pai, Office of Commissioner Rosenworcel, and Office of Commissioner Starks.

<sup>3</sup> By phone for the meeting with the Office of Chairman Pai.

Pamela Arluk  
Michele Berlove  
Megan Capasso Danner<sup>4</sup>  
Eric Ralph  
Pamela Megna

---

<sup>4</sup> By phone for the Bureau meeting.